

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 272.

THE UNITED STATES, PETITIONER,

vs.

NATIONAL SURETY COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE EIGHTH CIRCUIT.

Petition for Certiorari filed March 8, 1920.
Certiorari and Return filed May 31, 1920.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 272.

THE UNITED STATES, PETITIONER,

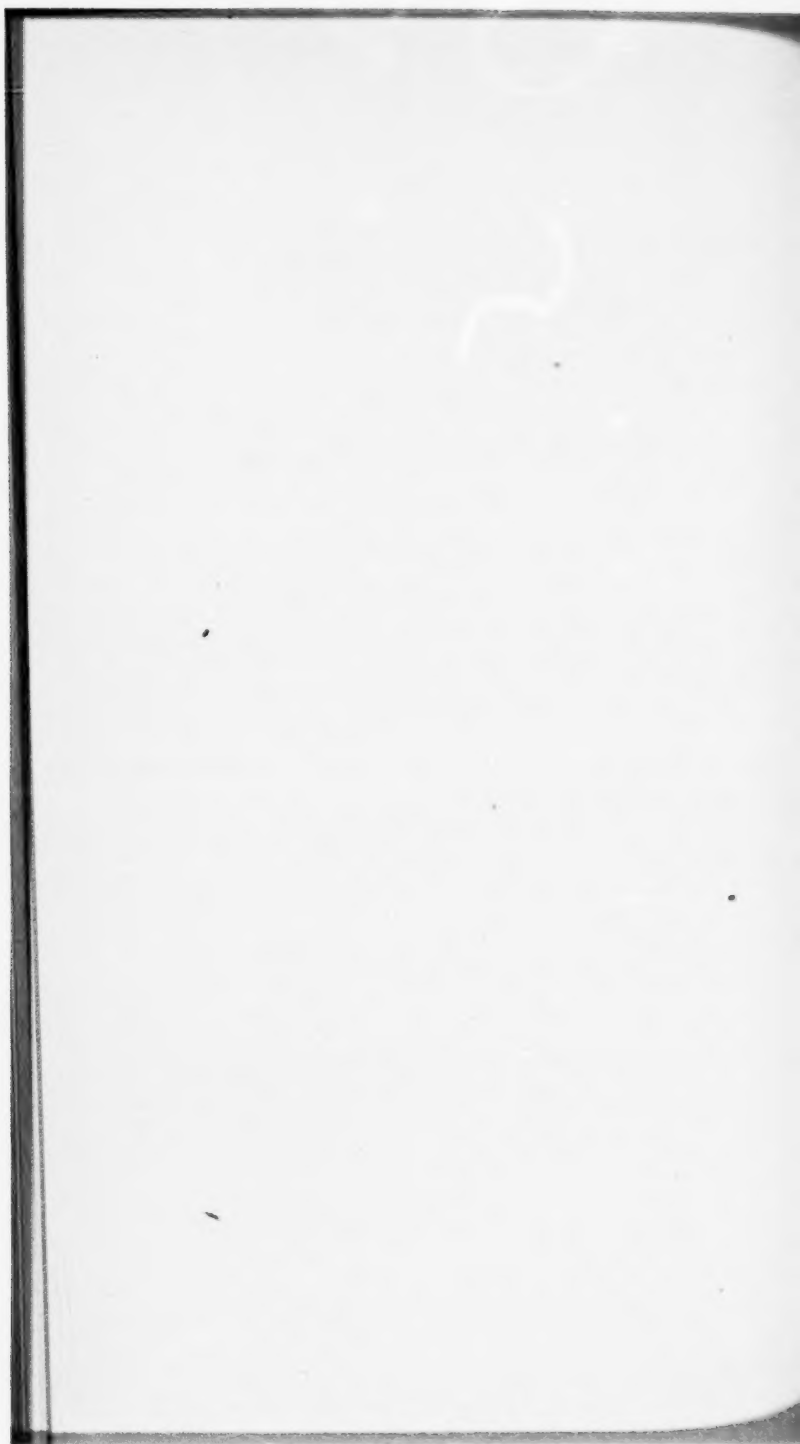
vs.

NATIONAL SURETY COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE EIGHTH CIRCUIT.

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a Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the December Term, 1919, of said court, before the Honorable William C. Hook and the Honorable John E. Carland, Circuit Judges, and the Honorable Frank A. Youmans, District Judge.

Attest :

[SEAL.]

E. E. KOCH,

*Clerk of the United States Circuit Court of Appeals
for the Eighth Circuit.*

Be it remembered that heretofore, to wit, on the sixteenth day of January, A. D. 1919, a transcript of record pursuant to an appeal allowed by the District Court of the United States for the Eastern District of Missouri, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit in a certain cause wherein the United States was appellant and National Surety Company was appellee, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its clerk, is in the words and figures following, to wit :



1 (Citation and Acknowledgment of Service.)

In the United States District Court for the Eastern
Division of the Eastern District of Missouri.

In the Matter of Bald Eagle Mining Company, Bankrupt.

United States, Appellant,
No. 2879. vs.
National Surety Company, Appellee.

To the National Surety Company—Greeting:

You are hereby cited and admonished to appear in the United States Circuit Court of Appeals for the Eighth Circuit in the City of St. Louis, sixty days from and after the day this citation bears date, pursuant to the appeal duly obtained and filed in the Clerk's Office of the District Court of the United States for the Eastern Division of the Eastern District of Missouri, wherein you are appellee and the United States is the appellant, to show cause, if any there be, why the order and decree in said appeal mentioned should not be reversed and corrected and why speedy justice should not be done to the parties in that behalf and to do and receive that may appertain to justice to be done in the premises.

Witness the Honorable United States Judge for the Eastern
Division of the Eastern District of Missouri on the 9th
day of January, 1919.

DAVID P. DYER,
Judge.

Service of above citation and receipt of copy of same is
hereby acknowledged this 9th day of January, 1919.

FORDYCE, HALLIDAY & WHITE,
Attorneys for Appellee.

2 Endorsed: Filed in the District Court on January
9, 1919.

United States of America,
Eastern Division of the Eastern
Judicial District of Missouri—ss.

In the District Court of the United States, within and for
the Eastern Division of the Eastern Judicial District
of Missouri.

Be It Remembered, that heretofore, to-wit on the 9th day
of January, 1919, there was filed in the office of the Clerk of
the District Court of the United States, a certain election
and praecipe for transcript, In the Matter of Bald Eagle
Mining Company, Bankrupt, In Bankruptcy, No. 2879, in
words and figures, as follows, to-wit:

4 Election as to Printing and Praecipe for Transcript.

In the Matter of Bald Eagle Mining Company,
Bankrupt,

United States, Appellant,

No. 2879. vs.

National Surety Company, Appellee.

In the matter of the Appeal of United States, from the Or-
der and Decree of Court Confirming the Report of the Re-
feree, in allowing, on the 25th day of March, 1918, on motion
filed by said National Surety Company on the 12th day of
March, 1918, said National Surety Company to amend its
claim of \$3000.00, theretofore, on the 3rd day of November,
1917, allowed as a general claim against said bankrupt es-
tate, so as to claim and receive the same priority as the
claim of the United States and to share in the distribution
of said bankrupt estate pro rata with the United States, and
by allowing said National Surety Company, upon its said
amended claim, like priority as the United States and the
right to share in the distribution of said bankrupt estate pro
rata with the United States, and allowing, on the 25th day
of March, 1918, on motion filed by said National
Surety Company on the 12th day of March, 1918,
said National Surety Company to amend its claim
of \$150.00, theretofore, on the 3rd day of Novem-
ber, 1917, allowed as a general claim against said bankrupt
estate, so as to claim and receive the same priority as the
claim of the United States and to share in the distribution
of said bankrupt estate pro rata with the United States,

5 and by allowing said National Surety Company, up-
on its said amended claim, like priority as the United
States and the right to share in the distribution of
said bankrupt estate pro rata with the United States.

To the Clerk of the above-entitled Court:

You will please prepare a typewritten transcript of the record in the above entitled matter to be printed under the supervision of the Clerk of the United States Circuit Court of Appeals, Eighth Circuit, and include in such transcript the following and no other papers:

Assignment of Errors,

Petition for Appeal,

Order Allowing Appeal,

Stipulation filed January 9th, 1919, and

This election and praeceipee.

BENJ. L. WHITE,
Assistant United States Attorney,
Attorney for Appellant.

(Endorsed: "Filed Jan. 9, 1919. W. W. Nall, Clerk.")

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(Assignment of Errors.)

Now comes the United States, complainant, and files the following assignment of errors, on appeal from an Order and Decree of the United States District Court, for the Eastern Division of the Eastern District of Missouri, made and entered on the 31st day of December, 1918.

First: The Court erred in approving and confirming the order of Walter D. Coles, Referee in Bankruptcy within and for the Eastern Division of the Eastern District of Missouri, allowing, on the 25th day of March, 1918, on motion [ofiled] by said National Surety Company on the 12th day of March, 1918, said National Surety Company to amend its claim of \$3000.00, theretofore, on the 3rd day of November, 1917, allowed as a general claim against said bankrupt estate, so as to claim and receive the same priority as the claim of the United States and to share in the distribution of said Bankrupt estate pro rata with the United States, and by allowing said National Surety Company, upon its said amended claim, like priority as the United States and the right to share in the distribution of said bankrupt estate pro rata with the United States, and allowing, on the 25th day of March, 1918, on motion filed by said National Surety Company on the 12th day of March, 1918, said National Surety Company to amend its claim of \$150.00, theretofore, on the 3rd day of November, 1917, allowed as a general claim

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against said bankrupt estate, so as to claim and receive the same priority as the claim of the United States and to share in the distribution of said bankrupt estate pro rata with the United States, and by allowing said National Surety Company, upon its said amended claim, like priority as the United States and the right to share in the distribution of said bankrupt estate pro rata with the United States.

Second: The Court erred in approving and confirming the order of Walter D. Coles, Referee in Bankruptcy within and for the Eastern Division of the Eastern District of Missouri, according to said claims of said National Surety Company the same priority as the claim of the United States and ordering that said claims of said National Surety Company share in the distribution of said bankrupt estate pro rata with the United States and in not directing said Referee to change and reform his said orders accordingly, and to deny said National Surety Company's claims the same priority as that of the United States and to deny the right of said National Surety Company's claims to share pro rata in the distribution of said bankrupt estate with the United States.

Third: The Court erred in not holding and adjudging that said National Surety Company, having, on the 3rd day of November, 1917, filed and had allowed its said claims as general claims against said bankrupt estate it could not, by motion, filed on the 12th day of March, 1918, (more than one year after the original claim had been filed and allowed), have said claims amended by making them preferred claims and entitled to the same priority as claims of the United

8 States, such action by said National Surety Company being in effect not an amendment of its said original claims but a substitution of other and different claims, and in not directing and ordering said Referee to change and reform his said order accordingly, and to deny said National Surety Company's claims the same priority as the claim of the United States and to deny to said National Surety Company's claims the right to share pro rata with the United States in the distribution of said bankrupt estate.

BENJ. L. WHITE,
Assistant United States Attorney,
For Appellant.

(Endorsed: "Filed Jan. 9, 1919. W. W. Nall, Clerk.")

- 9 Petition for and Order Allowing Appeal of United States from Order and Decree of United States District Court, of December 31, 1918, Approving and Confirming Orders of Walter D. Coles, Referee in Bankruptcy, for Eastern Division of Eastern District of Missouri, Made on the 25th day of March, 1918.

To the Honorable Judge of the United States District Court for the Eastern Division, Eastern District of Missouri:

The United States, your petitioner, conceiving itself aggrieved by the final order and decree entered on the 31st day of December, 1918, in the above entitled proceeding dismissing the petitioner's petition for review of the referee's orders, allowing, on the 25th day of March, 1918, on motion filed by said National Surety Company on the 12th day of March, 1918, said National Surety Company to amend its claim of \$3000.00, theretofore, on the third day of November, 1917, allowed as a general claim against said bankrupt estate, so as to claim and receive the same priority as the claim of the United States and to share in the distribution of said bankrupt estate pro rata with the United States, and by allowing said National Surety Company, upon its said amended claim, like priority as the United States and the right to share in the distribution of said bankrupt estate pro rata with the United States, and allowing, on the 25th day of March, 1918, on motion filed by said National Surety Company on the 12th day of March, 1918, said National Surety Company to amend its claim of \$150.00, theretofore, on the 3rd day of November, 1917, allowed as a general claim against said bankrupt estate, so as to claim and receive the same priority as the claim of the United States and to share in the distribution of said bankrupt estate pro rata with the United States, and by allowing said National Surety Company, upon its said amended claim, like priority as the United States and the right to share in the distribution of said bankrupt estate pro rata with the United States, does hereby petition for an appeal from said order and decree to the United States Circuit Court of Appeals for the Eighth Circuit, and prays that its appeal may be allowed and a citation granted, directed to the National Surety Company, commanding it to appear before the United States Circuit Court of Appeals for the Eighth Circuit, to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record proceedings, and evidence in said proceedings duly authenticated may be trans-

mitted to the United States Circuit Court of Appeals for the Eighth Circuit.

UNITED STATES, PETITIONER.
By Benj. L. White, Assistant United States
Attorney, For Appellant.

The foregoing appeal is hereby allowed this 9th day of January, 1919.

(Signed) DAVID P. DYER,
District Judge.

(Endorsed: "Filed Jan. 9, 1919. W. W. Nall, Clerk.")

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(Stipulation as to Record, etc.)

Appeal of United States from the Order and Decree of United States District Court, December 31st, 1918, approving and confirming an order of Referee in Bankruptcy allowing, on the 25th day of March, 1918, on motion filed by said National Surety Company on the 12th day of March, 1918, said National Surety Company to amend its claim of \$3000.00, theretofore, on the 3rd day of November, 1917, allowed as a general claim against said bankrupt estate, so as to claim and receive the same priority as the claim of the United States and to share in the distribution of said bankrupt estate pro rata with the United States, and by allowing said National Surety Company, upon its said amended claim, like priority as the United States and the right to share in the distribution of said bankrupt estate pro rata with the United States, and allowing, on the 25th day of March, 1918, on motion filed by said National Surety Company on the 12th day of March, 1918, said National Surety Company to amend its claim for \$150.00, theretofore, on the 3rd day of November, 1917, allowed as a general claim against said bankrupt estate, so as to claim and receive the same priority as the claim of the United States and to share in the distribution of said bankrupt estate pro rata with the United States, and by allowing said National Surety Company, upon its said amended claim, like priority as the United States and the right to share in the distribution of said bankrupt estate pro rata with the United States.

12 It is hereby stipulated by and between counsel for appellant and counsel for appellee that on this appeal, merely the appeal papers and this stipulation may be printed.

It is further stipulated that if the United States Court of Appeals holds an appeal is the proper method to obtain a

review in this case, the printed record, in this same matter on the petition to revise, filed by appellant, may be treated as part of the record on this appeal.

BENJ. L. WHITE,

Assistant United States Attorney,
Attorney for Appellant.

FORDYCE, HOLLIDAY & WHITE,

Attorneys for Appellee.

(Endorsed: "Filed Jan. 9, 1919. W. W. Nall, Clerk.")

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(Clerk's Certificate to Transcript.)

United States of America,
Eastern Division of the Eastern
Judicial District of Missouri—ss.

I, W. W. Nall, Clerk of the District Court of the United States, within and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the above and foregoing is a full, true and complete transcript of the record and proceedings, in cause No. 2879, of In the Matter of Bald Eagle Mining Company, Bankrupt, In Bankruptcy, (save as restricted by praecipe for transcript hereinbefore set [forty]), as fully as the same remains on file and of record in said cause in my office; and that the original [citation] is hereto attached and herewith returned.

Seal
U. S. District Court,
Eastern Division
of the
Eastern Judicial
District
of Missouri.

In Witness Whereof, I hereunto set
my hand and affix the seal of said
District Court, at office in the
City of St. Louis, Missouri, this
16th day of January, A. D., 1919.

W. W. NALL,
Clerk of said Court.
By Otto O. Fickeissen,
Deputy Clerk.

Filed Jan. 16, 1919. E. E. Koch, Clerk.



8 And thereafter the following proceedings were had in said cause, in the Circuit Court of Appeals, viz:

(Appearance of counsel for appellant.)

United States Circuit Court of Appeals, Eighth Circuit.

UNITED STATES, APPELLANT.	}	No. 5362.
<i>vs.</i>		
NATIONAL SURETY COMPANY.		

The clerk will enter my appearance as counsel for the appellant.
BENJ. L. WHITE.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Mar. 21, 1919.

(Appearance of counsel for appellee.)

The clerk will enter my appearance as counsel for the appellee.

S. W. FORDYCE, JR.,
JOHN H. HOLLIDAY,
THOMAS W. WHITE,
W. H. WOODWARD,
LUCIUS W. ROBB.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Mar. 29, 1919.

(Order of submission.)

MAY TERM, 1919.

Wednesday, May 28, 1919.

UNITED STATES, PETITIONER,	}	No. 201, Original.
<i>vs.</i>		
NATIONAL SURETY COMPANY.		

On Petition to Revise.
and

UNITED STATES, APPELLANT.	}	No. 5362.
<i>vs.</i>		
NATIONAL SURETY COMPANY.		

Appeal from the District Court of the United States for the Eastern District of Missouri.

These causes, Nos. 201, Original, and 5362, having been called for hearing in their regular order, the same were submitted on the brief

filed in behalf of the petitioner and appellant and argued by Mr. Frank E. Williams for the respondent and appellee.

Thereupon, these causes were submitted to the court on the printed record, the transcript of record from said district court and the briefs of counsel filed herein.

(Opinion.)

The opinion of the United States Circuit Court of Appeals filed December 10, 1919, in the case of United States, Petitioner, *vs.* National Surety Company, No. 201, Original, which also disposes of the appeal in this cause, is omitted from this transcript for the reason that a copy thereof is included in the transcript this date prepared in said cause No. 201, Original.

(Decree.)

United States Circuit Court of Appeals, Eighth Circuit.

DECEMBER TERM, 1919.

Wednesday, December 10, 1919,

UNITED STATES, APPELLANT,	} No. 5362.
<i>vs.</i>	
NATIONAL SURETY COMPANY.	

Appeal from the District Court of the United States for the Eastern District of Missouri.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Missouri, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the appeal from the order and decree of the said District Court in this cause be and the same is hereby dismissed without costs to either party in this court, on the ground that the questions of law involved in this appeal have been determined and decided in the cause on the petition to revise between the same parties hereto, No. 201, Original, in this court.

DECEMBER 10, 1919.

(Clerk's certificate.)

I, E. E. Koch, clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Missouri, as prepared and printed

under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its clerk, and full, true, and complete copies of all the pleadings, record entries, and proceedings, except the opinion, had and filed in the United States Circuit Court of Appeals (except the full captions, titles, and endorsements omitted in pursuance of the rules of the Supreme Court of the United States), in a certain cause in said Circuit Court of Appeals wherein the United States was appellant and National Surety Company was appellee, No. 5362, as full, true, and complete as the originals of the same remain on file and of record in my office.

I do further certify that on the tenth day of February, A. D. 1920, a mandate was issued out of said Circuit Court of Appeals in said cause, directed to the judges of the District Court of the United States for the Eastern District of Missouri.

In testimony whereof I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the city of St. Louis, Missouri, this eighteenth day of February, A. D. 1920.

[SEAL.]

E. E. KOCH,

*Clerk of the United States Circuit Court
of Appeals for the Eighth Circuit.*

12 In the Supreme Court of the United States, October term, 1919.

UNITED STATES, PETITIONER,	}	Nos. 779 & 780.
<i>vs.</i>		
NATIONAL SURETY COMPANY.		

Stipulation as to return to writ of certiorari.

It is hereby stipulated by counsel for the parties to the above entitled cause that the certified copy of the transcript of the record now on file in the Supreme Court of the United States shall constitute the return of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit to the writs of certiorari granted therein.

ALEX. C. KING,
Solicitor General.

S. W. FORDYCE,
JOHN H. HOLLIDAY,
THOS. W. WHITE,
Counsel for Respondent.

(Endorsed:) No. 201, Original. United States, Petitioner, *vs.* National Surety Company. No. 5362. United States, Appellant, *vs.* National Surety Company. Stipulation as to return to writs of certiorari. Filed May 12, 1920. E. E. Koch, clerk.

UNITED STATES OF AMERICA, ss:

The President of the United States of America, to the honorable judges of the United States Circuit Court of Appeals for the Eighth Circuit, greeting:

Being informed that there is now pending before you a suit in which The United States is appellant and National Surety Company is appellee, No. 5362, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Eastern District of Missouri, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States,

14 do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the sixth day of May, in the year of our Lord one thousand nine hundred and twenty.

JAMES D. MAHER,

Clerk of the Supreme Court of the United States.

(Return to writ.)

UNITED STATES OF AMERICA,

Eighth Circuit, ss:

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true, and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of United States, appellant, vs. National Surety Company, No. 5362, is a full, true, and complete transcript of all the pleadings, proceedings, and record entries in said cause as mentioned in the certificate thereto.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals, at office in the city of St. Paul, Minnesota, in the Eighth Circuit, this eighteenth day of May, A. D. 1920.

[SEAL]

E. E. KOCH,

Clerk of the United States Circuit Court of Appeals, Eighth Circuit.

(Endorsed:) File No. 27535. Supreme Court of the United States, No. 780, October term, 1919. The United States vs. National Surety Company. Office of the clerk. Received May 21, 1920. Supreme Court U. S. Writ of certiorari. Filed May 12, 1920. E. E. Koch, clerk.

(Indorsed on cover:) File No. 27535. Supreme Court U. S. October term, 1920. Term No. 272. The United States, petitioner, vs. National Surety Co. Writ of certiorari and return. Filed May 21, 1920.